



PRE-APPEAL/TRADEMARK REQUEST FOR REVIEW		Docket Number 22501-05496
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]  on <u>April 26</u> , 2006  Signature <u>Rajiv Patel</u>  Typed or printed name <u>Rajiv P. Patel, Reg. No. 39,327</u>	Application Number 09/397,491	Filed September 15, 1999
	First Named Inventor Stanislav Khirman	
	Art Unit 2143	Examiner George C. Neurauter
Applicant requests review of the rejection in the above-identified application. No amendments are being filed with this request.		
This request is being filed with a notice of appeal.		
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.		
<p>I am the <input type="checkbox"/> applicant/inventor. <u>Rajiv Patel</u> <input type="checkbox"/> assignee of record of the entire interest. <u>Rajiv P. Patel</u> See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. <input checked="" type="checkbox"/> attorney or agent of record. <u>(650) 335-7607</u> Registration number <u>39,327</u> <u>Telephone number</u> <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. <u>April 26</u>, 2006 Registration number if acting under 37 CFR 1.34 _____</p>		
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.		
*Total of <u>1</u> form is submitted.		

**ATTACHMENT TO THE**  
**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

This request is filed under Official Gazette (“O.G.”) Notice: “New Pre-Appeal Brief Conference Pilot Program.”<sup>1</sup> Notwithstanding the non-final nature of the Examiner’s rejection, Applicants respectfully submit this Pre-Appeal Brief Request for Review because the claims have been rejected at least twice during prosecution of the present application.

The current pending claims 29-48 are available in Amendment H filed on November 14, 2005 (“Amendment H”). These claims were entered and examined in the Office action dated February 13, 2006 (“Office action”).

**INTRODUCTION**

In the Office action, Examiner rejected claims 29-48 under 35 USC § 102(b) as allegedly being anticipated by “Teach Yourself TCP/IP in 14 days” (“TCP/IP”). Applicants request a pre-appeal brief conference to address clear factual and legal errors in Examiner’s rejection of pending claims 29-48 because Examiner fails to identify the presence of each element required to establish a *prima facie* rejection.

Independent claims 29, 36 and 43 provide a detector device capable of controlling access to information or resources on a network by monitoring signals on the network. Upon detecting a signal on the network, the detector device determines whether a user is permitted to access a resource or data on the network. The detector device also compares a parameter associated with the user, e.g., a credit balance for the user, with a parameter associated with

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<sup>1</sup> O.G. Notice re: Pre-Appeal Brief Program dated July 12, 2005 and indefinitely extended per Notice dated January 10, 2006.

the data/resource, e.g., a value for accessing the resource, to determine permission to access the data/resource. Based on the comparison, the detector device determines a response to the signal, e.g. altering communications between network devices. Accordingly, when the detector device is operational it is capable of controlling access to network resources and data. Moreover, signals on the network are able to pass uninterrupted in response to an operational failure within the detector device, the operational failure comprising a non-functioning operation. Hence, the claimed invention provides a robust monitoring and processing system without introducing a point of failure within the network. Amendment H, pages 11-13.

#### **EXAMINER'S ARGUMENTS FAIL TO ADDRESS EACH LIMITATION**

On pages 3 of the Office action, Examiner alleges that “the broadest reasonable interpretation of the claims encompass an embodiment wherein the device totally fails and does not function at all.” Examiner’s claim interpretation is improper because it fails to consider every limitation in the claims.

M.P.E.P. § 2106(II)(C) clearly instructs examiners to “begin claim analysis by identifying and evaluating each claim limitation,” and “when evaluating the scope of a claim, every limitation in the claim must be considered” (emphasis in original). Unfortunately, Examiner’s claim interpretation fails to consider *most* of the claim limitations recited in independent claims 29, 36 and 43. These claims recite several operational aspects of a detector device that has not failed. Following are just a few examples of claim limitations *completely ignored* by Examiner’s approach: “generating a response to the request signal to alter communications between the first device and the second device in response to the comparison providing a first result and not altering communications between the first device

and the second device in response to the comparison providing a second result" as recited in claim 29, "identifying a credit balance for the user identification" as recited in claim 36, and "determining whether a user identified by the user identification parameter in a request signal of the plurality of request signals and associated with the first device is permitted access to data associated with the second device" as recited in claim 43. Amendment H, pages 9-11.

Examiner also alleges that a communication line, answering machine and modem allow signals to pass uninterrupted. However, these devices neither disclose nor suggest a detector device capable of controlling access to network information or resources without introducing a point of failure in the network, as recited in independent claims 29, 36 and 43. Moreover, the claim limitation of allowing signals to pass uninterrupted occurs in response to a non-functioning operation within the detector device. Thus, the claim interpretation approach used on pages 2-5 of the Office action is clearly erroneous because Examiner fails to consider every claim limitation while determining the scope of claims.

#### **REFERENCE FAILS TO DISCLOSE EACH LIMITATION**

In the Office action, Examiner rejects claims 29-48 under 35 U.S.C. § 102(b) as allegedly being anticipated by "Teach Yourself TCP/IP in 14 days" ("TCP/IP").

For a rejection under 35 U.S.C. 102(b), each element in a claim must be disclosed by a reference. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. § 2131; citing *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Examiner's rejection is clearly erroneous because the cited reference, TCP/IP, fails to disclose at least the following claim limitations.

**I. Reference fails to disclose allowing signals to pass uninterrupted in response to an operational failure within the detector device.**

As recited in independent claims 29, 36 and 43, one embodiment of the present invention provides a detector device that allows signals to pass uninterrupted on the network in response to an operational failure within the detector device. Amendment H, pages 14-15. According to one embodiment of the claimed invention shown in figure 3 of the present application, the detector device merely observes or samples signals passing through a connector node 312 without impeding the signals. Specification, page 11, lines 11-17. Hence, even if the detector device experiences a non-functioning operation, the signals will continue to pass through the connector node 312. Specification, page 4, lines 11-14; page 10, lines 21-27; Amendment G dated March 31, 2005, page 11; Amendment F dated August 3, 2004, page 10; Amendment E dated February 19, 2004, page 9. Therefore, the detector device does not introduce a point of failure in the network between devices that seek to communicate. Amendment H, pages 9-10, 14-16.

The portion of TCP/IP cited by Examiner on page 6 of the Office action merely identifies a conventional gateway whose “sole task is to receive a Protocol Data Unit (PDU) from either the internetwork or the local network and either route it on to the next gateway or pass it into the local network for routing to the proper user.” TCP/IP, page 45. When such a gateway experiences operational failure, it is *incapable* of continuing to route PDUs because each PDU must pass through the gateway. The PDUs will no-longer pass through a gateway if the gateway fails. Similarly, a conventional proxy server also impedes the flow of data if it is not functioning properly. Amendment H, pages 15-16. Therefore, Examiner’s rejection is clearly erroneous because TCP/IP fails to disclose or suggest a detector device that allows signals to pass uninterrupted in response to an operational failure.

**II. Reference fails to disclose comparing a parameter associated with the user with a parameter associated with the data/resource to determine permission to access the data/resource.**

According to one embodiment of the invention recited in independent claims 29, 36 and 43, the detector device compares a parameter associated with the user with a parameter associated with the data/resource to determine permission to access the data/resource. For example, the detector device allows a user to access a news article if the user's credit balance meets the required value, e.g. cost, of accessing the resource. Examiner's rejection is clearly erroneous because the cited reference, TCP/IP, neither discloses nor suggests these features of independent claims 29, 36 and 43.

The portion of TCP/IP cited by Examiner on page 6 of the Office action merely identifies a conventional gateway whose "sole task is to receive a Protocol Data Unit (PDU) from either the internetwork or the local network and either route it on to the next gateway or pass it into the local network for routing to the proper user." TCP/IP, page 45. However, this portion of TCP/IP clearly fails to disclose or suggest controlling access to data or a resource by comparing a parameter associated with the user with a parameter associated with the data/resource.

As explained above, Applicants respectfully submit that Examiner's rejection is clearly erroneous for failing to disclose or suggest at least the above features of independent claims 29, 36 and 43. Further, dependent claims 30-35, 37-42 and 44-48 depend from claims 29, 36 and 43, and are allowable at least for the same reasons as independent claims 29, 36 and 43. Accordingly, Applicants respectfully request allowance of all pending claims 29-48.